

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Boston Edison Company and)
Commonwealth Electric Company for)
Approvals Relating to the Renegotiation of)
Power Purchase Agreements With MASSPOWER)

D.T.E. 04-61

**RESPONSE OF MASSPOWER
TO
ATTORNEY GENERAL'S
MOTION TO REOPEN HEARINGS**

MASSPOWER hereby responds to the Motion of the Attorney General to Reopen Hearings ("OAG Motion") that was filed with the Department of Telecommunications and Energy ("Department") in the above captioned proceeding on November 23, 2004. In that motion, the Attorney General requests that the Department: (1) reopen the hearings in this proceeding to evaluate information provided by Boston Edison Company and Commonwealth Electric Company ("NSTAR") in a recently filed response to a record request; and (2) take administrative notice of the record in another pending matter which includes as an exhibit the prefiled testimony from one witness in the hotly contested proceeding regarding ISO-New England's proposal for locational installed capacity charges ("LICAP charges") that is presently pending before the Federal Energy Regulatory Commission ("FERC"). While MASSPOWER does not oppose the Attorney General's motion, for the reasons set forth below, MASSPOWER submits that even if the record in this proceeding is supplemented along the lines requested by the Attorney General, this record compels a conclusion that approval of the proposed transaction will result in savings for customers and, as a result, that the Department should approve that transaction.

ARGUMENT

The Attorney General's motion is predicated entirely on his bald assertions that "a new energy forecast ... significantly changes the economics of the Company's proposed buyout ..." and that if this revised forecast is modified to incorporate the "higher LICAP amounts the Company uses in its FERC testimony, ... the economics of the contract buyouts [will] reverse, so that the Company's proposal would ultimately cost customers." OAG Motion, pp. 2 and 3. These assertions are without merit.

First, the Attorney General misrepresents entirely the import of the recently filed analyses incorporating the new Henwood Fall 2004 forecast. Those analyses demonstrate significant savings for NSTAR's customers. The very document upon which the Attorney General relies for his ominous assertion that the new forecast "significantly changes the economics of the ... proposed buyout" (the November 12, 2004 update to Exh. DTE-RR-1), reports an updated estimate of more than \$89 million in benefits for NSTAR customers. Moreover, even if the most recent Henwood forecast is modified to incorporate an arbitrary ten percent increase in the forecast cost of fuel and energy, the resulting analysis continues to demonstrate that the proposed transaction with MASSPOWER will yield significant savings for NSTAR's customers. Exh. RR-DTE-5 (November 30, 2004)(more than \$76 million savings for customers).

Second, the Department should reject as inappropriate the Attorney General's suggestion that the decision here should be based on a forecast of future energy costs constrained to incorporate the estimate of future LICAP charges included in one witness' prefiled testimony in the pending FERC investigation of ISO-New England's LICAP charge proposal. Not only was the estimate of future LICAP charges in that testimony submitted to support rejection of the ISO-New England proposal and at one extreme end of several conflicting estimates submitted in the

pending FERC proceeding, but it is, as yet, untested by discovery, much less cross-examination in the FERC proceeding. Moreover, the use of that estimate would necessarily presuppose that the FERC will adopt the ISO-New England LICAP proposal as filed notwithstanding broad-based opposition to that proposal. The Attorney General has not, however, provided any basis for the Department to overlook these deficiencies. He has not provided any basis to conclude that the proffered estimate is more reliable than others presently pending before the FERC, that the estimate will withstand the scrutiny of adversarial process at the FERC, or even that the FERC is likely to adopt any particular LICAP proposal, much less the ISO-New England proposal without modification. Indeed, short of the incorporation and evaluation of the entire record before the FERC (a patently unworkable and incredibly wasteful undertaking that the Department should not even consider), the Attorney General cannot offer any way for the Department to assess the reasonableness of his position. For this reason alone, the Department should reject the Attorney General's proposed piecemeal modification of the Henwood forecast to incorporate estimates of potential future LICAP charges that he and NSTAR have adopted as part of their litigation position before the FERC.

In this regard, it should be emphasized that the estimate which the Attorney General would have the Department rely upon to determine benefits from the MASSPOWER termination was filed by NSTAR and the Attorney General to support their opposition to adoption of the ISO-New England LICAP proposal. In place of the ISO-New England LICAP proposal, they have joined a coalition that supports an alternative which would, among other things, exclude existing generating units, such as MASSPOWER, from eligibility for any LICAP payments. *See* D.T.E. 04-85 (Exh. AG-1, p. 33) ("Existing resources would continue to operate under the market structure that existed before LICAP"). In essence, the Attorney General is simultaneously urging

the FERC to reject the ISO-New England LICAP proposal in favor of an alternative that precludes MASSPOWER from receiving LICAP payments and asking the Department to apply a standard to the MASSPOWER termination that not only assumes that MASSPOWER will receive LICAP payments but, notwithstanding broad based opposition, that it will receive such payments at the level the Attorney General and NSTAR estimate will result if the ISO-New England proposal is adopted without any change.

The Attorney General is asking the Department to hold NSTAR's customers hostage to a standard that would deny them savings proven with independent forecasts that take into account implementation of LICAP unless those savings can be demonstrated to be sufficiently robust to withstand his dire forecast of the result that would follow if FERC rejects every objection to the ISO-New England proposal. Adoption of his approach would deny NSTAR's customers savings proven with forecasts from an independent party that take into account the implementation of LICAP. This is not consistent with the statutory standard set forth in G.L. c. 164, § 1G ("is likely to achieve savings to the ratepayers"). The record here demonstrates that the MASSPOWER termination is likely to achieve savings and that it should be approved.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, MASSPOWER submits that regardless of whether the Department grants the Attorney General's motion and supplements the record in this proceeding to include updated economic analyses, the record here will continue to demonstrate that approval of the proposed transaction is likely to result in savings for NSTAR's customers and, therefore, urges the Department to approve that transaction.

Respectfully submitted,

MASSPOWER

By its attorneys,

A handwritten signature in cursive script, reading "Mary Beth Gentleman".

Mary Beth Gentleman

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